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March 13, 1998

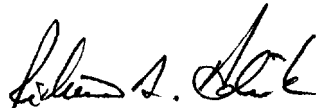
Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: **Gerard A. Turro, et al.**  
**MM Docket No. 97-122**

Dear Ms. Salas

Submitted herewith are an original and six copies of the Proposed Findings of Fact and Conclusions of Law of Universal Broadcasting of New York, Inc. as to the above-captioned proceeding.

Very truly yours



Richard A. Helmick

Enclosures

cc w/encl. (via hand delivery):

Honorable Arthur I. Steinberg  
Alan E. Aronowitz, Esq.  
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MAR 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

# Federal Communications Commission

In re

GERARD A. TURRO

For Renewal of License

for FM Translator Stations

W276AQ(FM), Fort Lee, NJ, and

W232AL(FM), Pomona, NY

MONTICELLO MOUNTAINTOP

BROADCASTING, INC.

Order to Show Cause Why the Construction )

Permit for FM Radio Station WJUX(FM), )

Monticello, NY, Should Not Be Revoked )

To: Honorable Arthur I. Steinberg  
Administrative Law Judge

MM Docket No. 97-122

File Nos. BRFT-970129YC

BRFT-970129YD

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF UNIVERSAL BROADCASTING OF NEW YORK, INC.

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March 13, 1998

## **SUMMARY STATEMENT**

This proceeding, in a word, is about a “SCAM” perpetrated on the Commission. “SCAM” is also a mnemonic for Sham, Cash, Arrogance and Mendacity; examination of these four components against the record evidence as a whole must lead to the ultimate conclusion that this proceeding really is about a scam.

**Sham.** Gerard Turro wanted to provide a locally originated broadcast service to Bergen County, New Jersey; the only problem was that there were no commercial channel allocations either available or possible due to frequency congestion in the proximity of New York City. So, in 1986, shortly after he acquired FM Translator W276AQ, serving Fort Lee, Bergen County, New Jersey, Turro undertook an unsuccessful five year campaign before the Commission and the United States Court of Appeals for the District of Columbia Circuit to obtain program origination authority for W276AQ, an operation not permitted then or now.

In 1993, Turro, d/b/a Bergen County Community Broadcast Foundation, acquired the license of 10 watt noncommercial FM Broadcast Station WNJW (formerly WJUX), Franklin Lakes, New Jersey, and rebroadcast WNJW on W276AQ ( the WNJW license was just recently canceled after Turro dismissed an application to renew the WNJW license). During 1993 and through October 1994, Turro broadcast over WNJW the same Jukebox Radio programming that he now provides to WJUX, except that WNJW, being a noncommercial station, could not carry commercial advertising and was limited to nonpromotional enhanced underwriting announcements; W276AQ originated 30 seconds per hour of commercial advertising.

In 1994, Turro learned of the availability of a construction permit for unbuilt commercial FM Station WJUX (formerly WXTM), assigned to serve Monticello, New York. However, as Bergen

County is wholly outside the WJUX service area, use of W232AL, Pomona, New York, and W276AQ, Fort Lee, New Jersey, was required to relay and rebroadcast the WJUX signal to Bergen County (unless one happened to have an extraordinary, possibly phenomenal, “hot spot” for reception on the roof and/or in the basement). Because Turro, under the translator rules, could not own WJUX if he also owned W232AL and/or W276AQ, he needed a third party to purchase WJUX who would be willing to allow WJUX to be programmed to serve Bergen County. Enter Wesley Weis, Turro’s long-time friend and business associate, who, incorporated as MMBI, acquired the Monticello station entirely with Turro’s financing.

Under cover of a “network affiliation agreement” with WJUX, the only station in this “network” of one station, Turro controls and provides essentially all of the WJUX programming, including commercial spots, station identifications, PSA’s, local news and weather, etc. and pays Weis/MMBI a monthly affiliation fee, the amount of which is unilaterally determined by Weis and not subject to arms-length negotiation. The commercial spots and other nonentertainment programming broadcast by WJUX are principally directed to the W276AQ service area in Bergen County, New Jersey and not the WJUX service area in Sullivan County, New York. Accordingly, the “network affiliation agreement” must be recognized as nothing but a ruse for Turro to indirectly originate programming over W276AQ via WJUX, thereby evading the FM translator program origination restrictions which were intended to limit FM translators to the provision of a secondary rebroadcast service rather than a primary originating service.

**Cash.** Follow the money. In addition to providing all the WJUX programming, Turro, in the form of network affiliation payments and inducement payments to affiliate with the Jukebox Radio “network of one station,” indirectly provided and/or provides to Weis/MMBI all funds

required to purchase and operate WJUX, as well as a profit to MMBI for making the WJUX facilities available to Turro; were it not for these payments from Turro, MMBI would not have agreed to acquire WJUX. Indeed, WJUX is not valuable to either MMBI or Turro as a Monticello, New York, FM station which covers only poor and rural Sullivan County, New York; WJUX is valuable to Turro (and, therefore, to Weis) only to the extent that it functions as a de facto FM station serving wealthy and populous Bergen County, New Jersey. Money talks and money controls. Follow the money--- all roads lead to Turro.

**Arrogance.** In anticipation that efforts to obtain a waiver of the program origination restrictions for W276AQ would ultimately fail, Turro, as early as January 1991, in a request for declaratory ruling, presented to the Commission the basic concept of a time brokerage relationship between a translator operator and a primary FM station; such declaratory ruling request, however, was short on detail and was misleading in failing to describe the extent of the relationship with the primary station; for example, whereas Turro told the Commission that the primary station would not provide any support to the translator operator, he did not tell the Commission that the translator operator would be supporting (indeed, financing the entire acquisition of) the primary station and providing all of the primary station's programming.

In hindsight, the Commission probably should never have issued its 1991 declaratory ruling, because even a minimal business relationship between a translator operator and the primary station per se prohibits the translator operator from rebroadcasting the primary station's programming beyond the primary station's protected service area pursuant to Section 74.1232 (d) of the Rules. The Commission revoked its 1991 declaratory ruling when it became aware of the extent of the

relationship between Turro and MMBI. In any event, a declaratory ruling only determines the law with respect to the factual basis on which it is predicated.

Turro and Weis, however, will undoubtedly urge the Presiding Officer to find that each, in good faith, relied on the Commission's 1991 declaratory ruling and, therefore, it is the Commission which is at fault for their present predicament; this is more than arrogance or revisionist history. Both Turro and MMBI were represented by competent communications counsel, which surely would have counseled both Turro and MMBI/Weis that the Commission would not and could not have issued a declaratory ruling which was contrary to the plain meaning of its Rules, if it had been provided with full disclosure of the parties' business relationship.

In any event, the extent to which Turro (and Weis) may have relied on the 1991 declaratory ruling could, at most, mitigate the level of any forfeitures to which they may be subject; it would not alter the inescapable conclusion that, under current Commission rules and policies, the WJUX/W232AL/W276AQ operations blatantly violate the notion of FM translators as a secondary service and make a mockery of the Commission's allotment of the WJUX frequency for service to Monticello, New York.

**Mendacity.** There is one irrefutable, albeit regrettable, conclusion which the record evidence compels. Because there is such disparity ( not a difference of degree, but one of substance) between the facts as presented by Turro and MMBI on the one hand, and the Mass Media Bureau and Universal on the other hand, all witnesses in this proceeding cannot be telling the truth and one or more have committed perjury. For example, Turro says he never used WMG-499 to originate program transmissions to W276AQ, whereas Loginow's tests show that he did. Actions as well as words determine credibility, and the Rube Goldberg signal delivery system Turro cobbled together

to deliver programming in a circuitous fashion to W276AQ “via WJUX” in order to serve the W276AQ service area in Bergen County, New Jersey--- a clear perversion of the translator rules--- speaks volumes about the credibility and candor of Turro and Weis/MMBI. Weis/MMBI is simply a conduit for Turro’s programming, and the money Turro paid and continues to pay Weis/MMBI to purchase and operate WJUX is simply laundered as network affiliation payments. Weis may deny that he is a front for Turro, but the devil is in the details, and the details reflect that Turro, not Weis, is the one who really controls WJUX.

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BEFORE THE

# Federal Communications Commission

In re	)	
	)	
GERARD A. TURRO	)	MM Docket No. 97-122
	)	
For Renewal of License	)	File Nos. BRFT-970129YC
for FM Translator Stations	)	BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and	)	
W232AL(FM), Pomona, NY	)	
	)	
MONTICELLO MOUNTAINTOP	)	
BROADCASTING, INC.	)	
	)	
Order to Show Cause Why the Construction	)	
Permit for FM Radio Station WJUX(FM),	)	
Monticello, NY, Should Not Be Revoked	)	
To: Honorable Arthur I. Steinberg		
Administrative Law Judge		

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW OF  
UNIVERSAL BROADCASTING OF NEW YORK, INC.**

Universal Broadcasting of New York, Inc. ("Universal") by its attorneys, hereby submits its proposed findings of fact and conclusions of law in the above-captioned proceedings.

**Preliminary Statement**

1. This consolidated proceeding involves applications of Gerrard A. Turro ("Turro") for renewal of licenses of FM Translator Stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York, and the revocation of construction permit of Monticello Mountaintop Broadcasting, Inc. ("MMBI") for FM Broadcast Station WJUX (formerly WXTM),<sup>1/</sup> Monticello,

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<sup>1/</sup> Prior to April 14, 1995, WJUX(FM) used the call letters WXTM(FM) and WJUX(FM) was assigned to WNJW(FM), Franklin Lakes, New Jersey, which was licensed to Bergen County Community Broadcast Foundation, an affiliate of Turro. MMB Ex.7 at 110. Pursuant to Public Notice No. 44172, dated February 5, 1998, official notice requested, the WNJW renewal application

New York. The Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing (FCC 97-137), MM Docket No. 97-122, released April 18, 1997 (the "HDO"), specified the following issues for adjudication:

- To determine whether Turro's operations of translator stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York, violated Sections 74.531(c) and 74.1231(b) of the Commission's Rules (Issue 1);
- To determine whether Turro engaged in an unauthorized transfer of control, or otherwise exercised and/or continues to exercise de facto control over WJUX, Monticello, New York, in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules (Issue 2);
- To determine whether Turro misrepresented or lacked candor to the Commission concerning the operation of translator stations W276AQ and W232AL (Issue 3);
- To determine whether, in light of the evidence addressed under the foregoing three issues, the public interest will be served by the grant of the above-captioned renewal applications filed by Turro (Issue 4);
- To determine whether MMBI has violated and/or continues to violate Section 73.1120 and 73.1125(a) and (c) of the Commission's Rules with respect to the maintenance of a main studio for Station WJUX(FM), Monticello, New York (Issue 5);
- To determine whether MMBI engaged in unauthorized transfer of control or otherwise abdicated control of Station WJUX to Turro or an affiliated entity in violation of Section 310(d) of the Commission's Act of 1934, as amended, and Section 73.3540(a) of the Commission's Rules (Issue 6);
- To determine whether MMBI and/or its agents misrepresented or lacked candor to the Commission concerning the operation of Station WJUX (Issue 7); and
- To determine whether, in light of the evidence addressed under the foregoing three issues, MMBI possesses the requisite qualifications to be or remain a Commission broadcast permittee (Issue 8).

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was dismissed and the WNJW license canceled pursuant to the request of Turro. Hereinafter, WJUX, Monticello, New York will, at all times, be referred to as "WJUX" even though it may have been using the call letters "WXTM" at that particular point in time, and WNJW, Franklin Lakes, New Jersey, shall be referred to as "WNJW" even though at the time it may have been using the call letters "WJUX."

Turro has the ultimate burden of proof as to those issues specified against him and the Mass Media Bureau has the ultimate burden of proof as to those issues specified against MMBI.

2. Prehearing conferences were held on May 20, 1997, September 3, 1997 and October 8, 1997 and an admission session for written case exhibits was held on November 24, 1997; hearings were held on December 2-5 and 8-12, 1997. The record in this proceeding was closed at the conclusion of the December 12, 1997 hearing session, reopened to receive Turro Exhibits 38-40 and then reclosed.

### **Findings of Fact**

3. **Background Statement.** Turro d/b/a Jukebox Radio and/or Jukebox Radio Network, produces and originates from his studios in Dumont, Bergen County, New Jersey,<sup>2/</sup> and provides, pursuant to a network affiliation agreement, essentially all of the programming broadcast by WJUX, Monticello, Sullivan County, New York.<sup>3/</sup> MMB Ex. 8 at 136-141; Tr. 2035, 2042. Turro leases a two way (send and receive) 56 kilobit land line circuit between his Dumont studios and WJUX to deliver Jukebox Radio programming to WJUX and to remotely control the WJUX transmitter. Tr. 1504, 1508. From late October 1994 until early January 1995, Turro testified that the WJUX signal was directly received off air, over a distance of approximately 72 miles, by W276AQ, Fort Lee, New Jersey, for rebroadcast; from early January 1995, after the Commission authorized Wesley Weis ("Weis") to divest his part ownership in W232AL, Pomona, New York, making Turro the sole owner of W232AL, Turro testified that the WJUX signal was received off air, via W232AL, and rebroadcast by W276AQ. Tr. 1631-33, 1738.

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<sup>2/</sup> Bergen County, New Jersey, has a population of 825,380 and Dumont has a population of 17,187. 1990 U.S. Census (official notice requested).

<sup>3/</sup> Sullivan County, New York, has a population of 69,277 and Monticello has a population of 6,597. 1990 U.S. Census (official notice requested). See also, MMB Ex. 8 at 115.

4. On February 15, 1995, Universal filed a complaint with the Commission alleging, in part, that a) Turro was providing essentially all of the programming, including commercial spots, broadcast by WJUX and that such programming was directed to Bergen County, New Jersey (served by W276AQ) rather than the WJUX service area, b) Turro was remotely controlling WJUX from his Jukebox Radio studios in Dumont, New Jersey, c) all telephone calls to WJUX were being call-forwarded to Turro's studios in Dumont, d) Turro, via microwave Intercity Relay Station WMG-499, was transmitting locally originated programming from his Dumont studios directly to W276AQ for broadcast and that W276AQ did not receive such programming off air from WJUX for rebroadcast and e) in any event, Turro's relationship with WJUX was a perversion of the Commission's Rules which prohibit a primary FM station (e.g., WJUX) from financially supporting a translator station (e.g., W276AQ) which rebroadcasts the primary station's signal in areas outside of the primary station's 1.0 mV/m protected contour, since Turro, through the sale of commercial time on WJUX and by otherwise programming WJUX to primarily serve Bergen County, New Jersey, rather than the WJUX service area, was operating W276AQ to function as a primary originating station rather than a secondary rebroadcast facility. MMB Ex. 2 at 32-36.

5. As a result of Universal's complaint, Serge Loginow, Jr. ("Loginow") an inspecting engineer in the Commission's New York City field office, conducted the following inspections: an unannounced inspection of WJUX on April 13, 1995; an announced inspection of Jukebox Radio studios in Dumont and monitoring of W276AQ and W232AL upon shut-down of the WJUX transmitter on April 14, 1995; an unannounced monitoring/signal generation test of W276AQ on May 15, 1995; an unannounced monitoring on July 31, 1995, to confirm that operation of WMG-499 had been terminated; an unannounced inspection of the facilities of W276AQ and W232AL on August 2, 1995; an unannounced monitoring/signal generation test of W276AQ on June 4, 1997. MMB Ex.4; Tr. 336-398.

6. Thus, Turro and MMBI were on notice that the Commission was looking at their operations as early as April 13, 1995. Moreover, even though Universal had filed its complaint under a confidentiality request, Turro and MMBI, through their Washington, D.C. communications counsel, Koteen & Naftalin, were able to obtain a copy of Universal's complaint prior to receiving the Commission's June 21, 1995, letter of inquiry (MMB Ex. 7). Tr. 1418,1772-3. Accordingly, Universal submits that the relevant time period for accessing whether Turro and MMBI's conduct was in compliance with Commission rules and policies is prior to July 1995 as, by that date, both Turro and MMBI clearly were on notice that their conduct was under Commission scrutiny.

7. **Section 74.531 (c) and 74.1231 (b) Issues (Issue 1)**. On September 23, 1993, Turro was granted a license for Intercity Relay Station WMG-499, 951.000 MHZ, Dumont, New Jersey; WMG-499 was used to transmit locally originated hourly 30 second spots acknowledging financial support which were broadcast by W276AQ and for operational/telemetry communications between what was then the Dumont, New Jersey, main studio of noncommercial educational FM Station WNJW, Franklin Lakes, New Jersey, and W276AQ which rebroadcast WNJW. MMB Ex. 9; Tr. 1805-07.

8. On October 21, 1994, three days after MMBI acquired the construction permit for the unbuilt station in Monticello, New York, WJUX began broadcast operations<sup>4/</sup> and on October 25, 1994, WNJW, Franklin Lakes, New Jersey, went silent; accordingly, Turro's Dumont, New Jersey studio ceased to function as the WNJW main studio and became the program production studio of Jukebox Radio Network, providing programming to WJUX. Tr. 1393, 2042-45, 2059-61.

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<sup>4/</sup> Weis testified that the decision to build and put WJUX in operation only three days after acquiring the construction permit was based on Turro's desire to sell commercial time on Jukebox Radio programming and Weis' desire to receive payments under the "network affiliation agreement" with Jukebox Radio.

Moreover, once WJUX went on the air, Turro did not use WMG-499 to transmit any locally originated 30 second hourly spots to W276AQ for broadcast, as all commercial spots were being incorporated into the Jukebox Radio program feed to WJUX and rebroadcast by W276AQ, and WMG-499 ceased to have any program transmission function in late October 1994. Tr. 1718.

9. Nevertheless, from late October 1994 through early July 1995, Turro continued to use WMG-499 for remote control/telemetry of W276AQ<sup>5/</sup> and as a “back-up” system for transmitting locally originated emergency messages (pertaining to Bergen County, New Jersey) from the Jukebox Radio studios in Dumont to W276AQ in the event WJUX was off the air and could not broadcast emergency messages for rebroadcast by W276AQ. Turro kept WMG-499 “live all the time” so that it could provide continuous remote control telemetry between the Dumont studios and W276AQ and because WMG-499 might be damaged through repeatedly turning the unit on and off over time. Turro Ex. 1 at 10-12; Tr. 1693, 1702-03. In that regard, Turro testified that he used WMG-499 to transmit locally originated emergency messages to W276AQ no more than five times since WMG-499 began operating in 1993 in conjunction with WNJW; however, since October 1994, when WJUX began broadcast operations, Turro believes that WMG-499 was not used for any emergency

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<sup>5/</sup> While the typical FM translator has only one receive antenna (to receive off air the incoming signal of the primary FM station) and one transmit antenna (to rebroadcast the signal of the primary station on the outgoing translator frequency), W276AQ is not a typical translator. W276AQ is equipped with a main and auxiliary transmitter, a main and auxiliary transmit antenna, a receive antenna pointed at W232AL (94.3 MHZ), Pomona, New York, a receive antenna pointed at WJUX (99.7 MHZ), Monticello, New York, and a receive antenna pointed towards WBAI (99.5 MHZ), New York, New York (this antenna is used for the purpose of canceling out adjacent channel interference to the off air reception of WJUX). From 1993 until early July 1995 (when WMG-499 was deactivated pursuant to Commission directive), W276AQ also had a receive antenna pointed at WMG-499 (951 MHZ), Dumont, New York, to receive either hourly 30 second commercial spots for broadcast (prior to October 21, 1994 when WJUX went on the air) and/or remote control telemetry communications. Turro Ex.1 at 10; Tr. 1710-12, 1724.

communications, but he had no specific recollection if that was, in fact, the case.<sup>6/</sup> Tr. 1809-10, 1813.

10. Turro multiplexed the WMG-499 microwave signal into two channels, a data channel for remote control telemetry of W276AQ and an audio channel of the Jukebox Radio program feed to WJUX in the event that an emergency required its use. Turro asserted that he put the Jukebox Radio program feed on the audio portion of the WMG-499 signal so that the WMG-499 signal could be monitored and the source easily identified by third parties in the event of interference from WMG-499. Turro Ex. 1 at 12. The audio portion of the WMG-499 signal, however, was fed into a dummy load and was not transmitted by W276AQ; Turro categorically testified that from October 1994 when WJUX went on the air through July 1995 when WMG-499 ceased to operate that he never used WMG-499 to provide locally originated programming from Dumont to W276AQ “unless there was an emergency” and that at all other times W276AQ rebroadcast the signal of either WJUX or W232AL. Turro Ex 1 at 12; Tr. 1619,1668-69.

11. Turro stated that, as a fail-safe in the event of an emergency, he engineered the WMG-499 microwave path between Dumont and W276AQ so that if there was any interruption or loss of the data channel and W276AQ could not be remotely controlled, a relay at the W276AQ transmitter would switch the audio channel carrying the Jukebox Radio program feed from the dummy load to the W276AQ signal input so that W276AQ would directly broadcast the program feed and not rebroadcast WJUX or W232AL. If both the data and audio channels of the WMG-499 signal were interrupted or lost, then W276AQ was programmed to revert to receiving off-air the signal of WJUX either directly or via W232AL in Pomona. Turro Ex. 1 at 12-13; Tr. 1621-22, 1631-33,1672-89.

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<sup>6/</sup> Sergeant Paul Einreinhofer of the Bergen County Office of Emergency Management testified that Turro has never been requested to interrupt Jukebox Radio programming in order to broadcast emergency information. Tr. 1327-28.

12. On May 15, 1995, Loginow conducted a surprise monitoring/inspection of W276AQ. Using a portable one volt signal generator equipped with a 3 foot whip antenna and having a maximum power of one half watt, Loginow positioned himself inside of a locked stairwell which opened onto the roof of the Mediterranean Towers building where the W276AQ transmit and receive antennas were located. Tr. 348-53. Loginow generated a signal on 99.7 MHZ (the WJUX frequency) and 94.3 MHZ (the W232AL frequency) which had no effect on the operation of W276AQ, indicating that W276AQ was not receiving a signal from either of those two sources.<sup>2/</sup> Tr. 355-58. However, when Loginow generated a signal on 951 MHZ (the WMG-499 frequency), the signal produced by the signal generator overrode the incoming from WMG-499, producing silence or dead carrier on 951 MHZ and silence on the output channel of W276AQ, indicating that W276AQ was receiving its input signal directly from WMG-499 and not off air from W232AL. Tr. 358-59. Moreover, Turro's testimony supports Loginow's conclusion that on May 15, 1995, W276AQ was rebroadcasting the signal of WMG-499 and not W232AL.

13. Loginow testified that he interrupted the WMG-499 signal twice within a 15 second period on May 15, 1995, for a total of approximately 10 seconds (5 seconds on each occasion with

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<sup>2/</sup> Turro testified that on May 15, 1995, W276AQ was receiving the signal of W232AL via a temporary antenna in the basement of the Mediterranean Towers and then fed by wire to the W276AQ transmit antenna on the roof of the building; this was because the regular roof top receive antenna had been "vandalized." Although the antenna was not damaged, four antenna mounting bolts and the receive antenna had been removed from the antenna pole and left on the roof. Turro Ex. 1 at 22-23; Tr. 2053-54. Loginow was "rather confident" that, due to signal ducting, the signal which he generated on 94.3 MHZ would have been sufficient to override the incoming signal of W232AL at a receive antenna in the basement of the Mediterranean Towers. Tr. 369-70, 549. However, in October 1997, Herman Hurst, using a signal generator with a 5 watt output fed into a tuned antenna in the basement of the Mediterranean Towers was unsuccessful in jamming reception of W232AL at its roof top receive antenna. Turro Ex. 35. In any event, Loginow testified that even if the signal he had generated on 94.3 MHZ had not been sufficient to override the incoming W232AL signal received at the temporary basement antenna, generating a signal on 951 MHZ should not have resulted in producing dead carrier on W276AQ as happened. Tr. 375-78.



approximately 5 seconds between interruptions. Tr. 565-66. Turro testified that between 2 p.m. and 2:30 p.m. on the afternoon of May 15, 1995, the signal of W276AQ was interrupted and went to dead carrier; by the time he had run upstairs to check on the W276AQ TC-8 remote control unit located in the Jukebox Radio on-air studio, W276AQ had resumed broadcasting. However, status light number 6 on the remote control unit indicated that when W276AQ resumed transmissions, the signal input to W276AQ was that of WMG-499 and not W232AL, then the off-air signal source of W276AQ; accordingly, Turro used the remote control unit to switch W276AQ from reception of WMG-499 to off-air reception of W276AQ. Tr. 1696-99, 1701.

14. The TC-8 remote control input signal status lights indicated the signal input source for W276AQ and were activated by telemetry data which was transmitted in the subcarrier of the W276AQ signal; Turro testified that there never was an occasion when the telemetry data transmitted in the W276AQ subcarrier resulted in an inaccurate status light activation, such as activation of status light number 5, indicating off-air reception of W232AL by W276AQ, instead of light number 6, indicating reception of WMG-499, when, in fact, the signal of WMG-499 was being input to and rebroadcast by W276AQ. Tr. 1706-08. In the event of a complete loss of the microwave signal, both audio and data channels, Turro had programmed W276AQ to continue receiving the signal of WJUX off-air, either directly or via W232AL, whichever signal source was in use prior to the loss of the WMG-499 multiplexed signal. Turro Ex. 1 at 12; Tr. 1619, 1668-69. Accordingly, if W276AQ had been receiving its signal input from W232AL prior to Loginow's interruption of the WMG-499 signal, when W276AQ resumed operations it should have been rebroadcasting the signal of W232AL and not the signal of WMG-499, a fact which was confirmed by Turro in his response to the following question of the Presiding Officer:

Judge Steinberg: Had this [Loginow's interruption of the signal of WMG-499 and the resulting loss of W276AQ's signal] happened when you weren't there, let's say you were in Las Vegas at the NAB convention, would it [the W276AQ remote control

unit] have stayed on light number five ?

Turro: Oh, yeah.

Judge Steinberg: Indefinitely?

Turro: Yeah. Fortunately, that never happened.

Judge Steinberg: Okay. The record got that right?

Tr. 1699-1700.

15. Turro testified that the only way the WMG-499 audio channel could be broadcast by W276AQ was if the WMG-499 data channel failed and W276AQ switched over to the WMG-499 audio channel for its signal input or if the WMG-499 signal input was switched to W276AQ at the W276AQ remote control unit in Dumont. Tr. 1637-39. Moreover, as Turro had initially configured and, over time, changed the configuration of the W276AQ remote control unit, only he knew what the various channels and status lights indicated and what functions the W276AQ remote control unit was performing since those functions could not be determined through observation. Tr. 1662-66. Turro kept this information to himself because he did not want anyone to switch the W276AQ signal inputs at the remote control unit without his permission, even in the event of an emergency communication situation. Tr. 1667.

16. When asked as to why he programmed the W276AQ remote control system with a fail-safe feature which caused the audio channel of the WMG-499 microwave signal to be directly input to W276AQ for broadcast in the event of a loss of the data/telemetry channel, Turro responded that he did it that way in case the remote unit failed and he could not control W276AQ in the event of a need to broadcast emergency communications on W276AQ and because this capability to use WMG-499 as an emergency back-up system of communications to W276AQ was already incorporated into the design of the remote control unit. In short, the capability to use WMG-499 as an emergency back-up communications link to W276AQ was "right there," so why not make use

of it. Tr. 1687-90.

17. In 1993, prior to receiving a license for WMG-499, Turro had an 8 kHz local broadcast loop installed between the Jukebox Radio studio in Dumont and W276AQ at an installation cost of \$2,000 and a monthly service charge of \$100-150 per month. After receiving the WMG-499 license, Turro kept the 8 kHz broadcast loop in place because he had already made the investment to install it and he didn't want to lose it. Tr. 1714-16. While Turro agreed that he could have used the 8 kHz local broadcast loop for purposes of originating emergency communications over W276AQ, albeit at a lesser audio quality than could be obtained with WMG-499, he did not think he could have used the local broadcast loop for remote control telemetry of W276AQ; Turro stated that during his twenty-five years as a chief engineer or chief operator of stations he had never seen an 8 kHz line used for transmission of telemetry data, especially since you could get a lower grade line for less money to do the same job.<sup>8/</sup> Tr. 1716-1718, 1722-23.

18. Herman Hurst, Turro's consulting engineer, testified that an 8 kHz broadcast loop could be used as a data link for remote control of broadcast equipment. Tr. 1875. Moreover, after use of WMG-499 was discontinued in July 1995 pursuant to Commission directive, Turro replaced the telemetry/data functions of WMG-499 with a 9600 baud circuit. Tr. 1722.

19. The only other monitoring of WMG-499 occurred on February 2, 1995. MMB Ex. 6. Wilson La Follette of the consulting engineering firm of Cohen, Dippell and Everest, P.C., was engaged by Universal to monitor and perform signal measurement tests of the W276AQ transmitter site. La Follette conducted his observations and measurement tests .6 kilometers southeast of the Mediterranean Towers from the roof of a building approximately the same height as the

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<sup>8/</sup> But the cost of a lower grade circuit, such as the 9600 baud circuit installed by Turro, vis-a-vis a more expensive 8 kHz local broadcast loop was not at issue because Turro had already payed for installation of the 8 kHz circuit and continued to make monthly service charge payments for keeping that circuit available for use. Tr. 1714-16.

Mediterranean Towers. Tr. 652. Monitoring of the program transmissions of WMG-499, WJUX, W232AL and W276AQ, as well as the fact that WMG-499 gave the appearance of being operated as if it were an STL and not an intercity relay, led La Follette to conclude that the signal of WMG-499 was being directly input to W276AQ because he believed there could be no other explanation or purpose for using WMG-499 in the manner in which he observed it being used. Tr. 667-68, 706-07. La Follette was of the opinion the measured off-air signal of WJUX was unsuitable for rebroadcast due to low signal level and severe first adjacent channel interference from WBAI (FM). Tr. 656.

20. Use of WMG-499 to transmit Jukebox Radio programming to W276AQ for direct broadcast may have been necessary, either on an ongoing basis or from time to time, during the period from October 1994 to early January 1995 when W276AQ was rebroadcasting the signal of WJUX without using W232AL as an intermediate relay. Jules Cohen testified that based on a theoretical engineering analysis using Longley-Rice methodology (see Tr. 595 for a description), in his professional opinion, the WJUX signal received off air at W276AQ is "of marginal quality, not suitable for rebroadcast...subject to diurnal and seasonal variability, adjacent channel interference, and fading produced by changes in meteorological conditions." MMB Ex. 5 at 89. This is not to say that it is impossible for W276AQ to receive, at any given instant of time, a sufficient and suitable broadcast signal from WJUX, but the probability of receiving a consistent signal suitable for rebroadcast, i.e., a signal which is essentially noise free and free of interference, is "very small" and to the extent others may have experienced adequate reception of WJUX at W276AQ, it would seem that "there are circumstances which we really don't understand." Tr. 635-37.

21. For purposes of rebroadcast, Cohen used a confidence factor of 90% since, in his opinion, you need a reliable signal as close to 100% of the time as possible. Tr. 595-96, 614. With a 90% confidence factor, Cohen is of the opinion that the WJUX signal strength at W276AQ would have

to be at least 5.5 dBu whereas the undesired first adjacent signal of WBAI received at W276AQ is predicted to be 91.8 dBu, 86.3 dBu greater than the 5.5 dBu minimum acceptable WJUX signal necessary for rebroadcast by W276AQ; Cohen further testified that no combination of sophisticated filtering and antenna discrimination could completely eliminate first adjacent channel interference from WBAI to the WJUX signal and it is simply not credible, in his professional opinion, that the WJUX signal at W276AQ could be of sufficient strength in a consistent fashion so as to permit reception of a signal suitable for rebroadcast.<sup>9/</sup> Tr. 598-99, 612, 615-21, 628.

22. In contrast to the testimony of Jules Cohen, Turro states that he is able “with no difficulty” to receive a “good,” i.e., consistently satisfactory for rebroadcast, WJUX signal at W276AQ. Turro Ex. 1 at 6; Tr. 1734-35. Moreover, Turro testified that under normal conditions, i.e., when WJUX is operating at its regularly licensed power and not at reduced power, such as when its antenna was damaged by a lightning strike in April 1995, WBAI does not “significantly interfere,” i.e., does not interfere at all, with the reception of WJUX at W276AQ. Turro Ex. 1 at 19; Tr. 1753. Turro’s testimony was confirmed by Herman Hurst who stated that, while Turro used audio processing equipment at W276AQ (and W232AL) to enhance audio reception by reducing extraneous noise and static, not common to translators but within the Commission’s Rules, WJUX can be received directly off air at W276AQ without the use of filters and without interference from adjacent channel Station WBAI. Turro Ex. 1 at 9; Tr. 1864-65, 1881.

23. Hurst testified that a “contributory factor,” assigning a value of approximately 33%, to the ability to receive a good quality WJUX signal at W276AQ suitable for rebroadcast, was the presence of a “hot spot” on the roof of the Mediterranean Towers. Tr. 1889-90. This hot spot is

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<sup>9/</sup> Whenever the WJUX signal is below the level suitable for rebroadcast, the listener would hear a very noisy, hissy and staticy, signal and the adjacent signal of WBAI would bleed into the WJUX signal. Tr. 628-29.

approximately 2-3 feet square; outside of the hot spot, the off air reception of WJUX was poor and degraded and required filtering, but within the hot spot the WJUX signal could be received without any filters to overcome first adjacent channel interference from WBAI. Tr. 1876-77, 1887, 1889, 1987-89. Turro testified that he first discovered this hot spot in late September or early October 1994, shortly before WJUX went on the air. Tr. 1994-96. Hurst testified that the first time he observed the hot spot was on July 6, 1995, in connection with his preparation of a July 25, 1995, statement responding to the Commission's June 21, 1995, letter concerning Turro's operation of W276AQ; however, Hurst makes no mention whatsoever of such hot spot in that July 1995 statement. Turro Ex. 2, Attachment B; Tr. 1884-85.

24. The second occasion Hurst observed the W276AQ hot spot was on October 16-17, 1997. On each occasion in July 1995 and October 1997 the hot spot was in exactly the same spot and the off air reception of WJUX was very good; moreover, Hurst understands that the reception of WJUX at the hot spot is continuously very good. However, Hurst saw nothing on the roof of the Mediterranean Towers, such as a reflector, which could explain this hot spot phenomenon. Tr. 1878-80. Jules Cohen testified that never, in over fifty years of engineering experience, has he encountered a situation such as the W276AQ hot spot; in his opinion the probability of receiving a consistently good signal over an extended period of time at W276AQ is extremely low absent some special conditions where the configuration of objects on the roof is such that you get the effect of a corner reflector producing an enhanced signal reception at the focal point of the reflector. Tr. 623-24. In any event, because of the 72 mile distance between WJUX and W276AQ, Cohen said you would need extended observations to confirm the existence of a consistently high signal strength at the hot spot. Tr. 623.

25. Hurst declined to speculate on whether the presence of a hot spot was unusual since it is not his practice to go looking for hot spots. Tr. 1890. However, Hurst did testify that in his

opinion the probability of finding a reliable hot spot, such as the W276AQ hot spot, on the roof of a building where a preexisting translator facility was already located was less than one percent. Tr. 1891.

26. In spite of a very low probability of finding one hot spot for the reception of W276AQ, on October 17, 1997, Hurst observed for the first time a second hot spot for the off air reception of W232AL; this W232AL hot spot was located in the basement of the Mediterranean Towers and comprises a wall area approximately 10 feet wide. Tr. 1989-93. Hurst termed the W232AL hot spot as “extraordinary” and “unusual (possibly phenomenal)” since it was found in the basement. Turro Ex. 35; Tr. 1893-97. Hurst speculated that the basement hot spot might be related to the fact that the telephone switch block and the main water pipe feeds for the entire building were located immediately behind the wall where the hot spot was located. Tr. 1899-1900. In any event, Hurst assigned a probability of less than one percent (the same probability as for the roof top hot spot) to finding a basement hot spot in a building where a preexisting translator facility was located. Tr. 1895. Without regard to the extraordinary and possibly phenomenal basement hot spot for reception of W232AL, Turro claims to be able to pick up W232AL on a car radio at ground level outside of the Mediterranean Towers while Loginow testified that at ground level the W232AL signal is “extremely weak to nonexistent.” Tr. 370-71, 1990.

**27. Unauthorized Transfer of Control/De Facto Control of WJUX (Issues 2 and 6).**

Sometime in 1994, Larry Fishman, a principal of the permittee of a new FM station in Monticello, New York (which subsequently became WJUX) called Turro. Turro Ex. 1 at 4; Tr. 2070-74. Sometime during the summer of 1994, Turro told Weis that the WJUX construction permit could be purchased. Tr. 1337, 1341, 1728-31. Turro proposed that Weis acquire the WJUX construction permit and build the station and that he (Turro) would provide all the programming, consisting of the existing Jukebox Radio programming then being broadcast by WNJW, Franklin Lakes, New

Jersey, and sell all commercial spots broadcast by WJUX. Tr. 1337-1340. Weis understood that Turro would rebroadcast WJUX on W276AQ and, eventually, W232AL and, because of Turro's ownership of these translators, Turro could not be an owner of WJUX.<sup>10/</sup> Tr. 1337-38, 1346.

28. Weis recalls that he had approximately three meetings with Larry Fishman in Fishman's New York City office to discuss the purchase of the WJUX construction permit and that Turro was present at two of those meetings. Tr. 1341-42. Turro was present when the WJUX purchase terms were negotiated, but Weis could not recall whether Turro took part in the negotiations. In any event, it was agreed that Weis doing business as MMBI would acquire the WJUX construction permit for a total purchase price of \$120,000, with \$40,000 in cash payable at closing and the balance of \$80,000 payable in 24 monthly installments of \$3,618.18 each, beginning on November 17, 1994. MMBI Ex. 5 at 15-19; Tr. 1346-47.

29. After agreeing to purchase the WJUX construction permit, Weis produced a business plan designed to recover or amortize all capital costs (such as construction and equipment costs and legal costs associated with putting WJUX on the air), all operating costs (such as for electricity, salaries, consulting fees, accounting fees, phone, rent and ongoing legal expenses) and a profit or return on investment of 15-20%. Tr. 1345, 1354-64. Fixed capital costs, such as the promissory note payments on the purchase price balance, would be recovered during the term of those payments whereas other capital costs, such as for equipment, were amortized over a five year period. Tr. 1363. Weis' business plan did not rely on any income from the sale of commercial time for broadcast on

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<sup>10/</sup> Turro and Weis jointly owned W232AL, which was located beyond the 1.0 mV/m service contour of WJUX, and Weis could not have an ownership interest in both WJUX and W232AL. Approximately two weeks before WJUX went on the air on October 21, 1994, the ownership issue of W232AL came up; accordingly, until early January 1995, after the Commission had approved Weis' withdrawal from ownership of W232AL, W232AL did not rebroadcast WJUX. Turro Ex. 1 at 4-5; Tr. 1399-1401, 1631-33.



WJUX as Weis did not contemplate that MMBI would sell any commercial time. Tr. 1356.

30. Based on his business plan, Weis determined the payments Turro would have to make to MMBI in consideration of the right to program and sell commercial time on WJUX. The amount and timing of such payments were not subject to any arms length negotiation between Weis and Turro, but, rather, were unilaterally determined by Weis. Tr. 1828-30. Turro never asked Weis as to how the payment amounts had been calculated and said he would have payed MMBI whatever amount of money Weis requested so long as it “made sense” for Jukebox Radio. Tr. 2080-81. Indeed, the monthly payments Turro made to MMBI were unilaterally increased by Weis by over \$1,000 per month to recover the cost of a standby generator and an auxiliary transmitter (additional costs not included in Weis’ original business plan) which were installed at the WJUX transmitter site in Spring 1996. Tr. 1366-69. There has never been a month where the amount of money paid by Turro to MMBI was insufficient to cover all of MMBI’s capital and operating expenses. Tr. 1365-66, 1435.

32. On October 17, 1994, MMBI entered into a “network affiliation agreement” with Bergen County Community Broadcast Foundation, a non-profit entity under which Turro, at the time, was doing business as Jukebox Radio. MMB Ex. 8 at 137-138. That same date, at Weis’ request, Turro paid MMBI \$40,000 as an “inducement” for entering into a network affiliation with Jukebox Radio Network<sup>11/</sup>; the payment was deposited into MMBI’s account and the very next day, October 18, 1994, MMBI paid Larry Fishman \$40,000 to close the purchase of WJUX. Tr. 1347-48, 1828-29. Accordingly, Turro indirectly paid the \$40,000 down payment on the WJUX purchase price. <sup>12/</sup>

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<sup>11/</sup> When MMBI entered into a network affiliation agreement, Turro told Weis that Jukebox Radio was looking for other affiliate stations; to date, however, WJUX is the only affiliate of Jukebox Radio Network. Tr. 1349, 1352-52, 1432-33.

<sup>12/</sup> The network affiliation agreement also provided that the monthly payments to MMBI would be reduced by \$3600 per month after the first thirty months reflects, in part, that MMBI